IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISIDICTION
WRIT PETITION NO.925 OF 2005

National Radio & Electronics
Co. Ltd. ..Petitioners/

Vs.

Mahendra Velji Rathod ..Respondent/
Ori.Plaintiff

....

Mr.N.V.Walawalkar i/b Mulla & Mulla & Craigie
Blunt & Caroe for Petitioners
Mr.Shravan Vyas for Respondent

....

CORAM : B.H.MARLAPALLE,J.
DATE : FEBRUARY 25,2005

P.C.:

1. Heard Mr.Walawalkar, the learned counsel for the petitioner-company and Mr.Vyas, the learned counsel for the respondent-landlord.

2. Rule. Mr.Vyas, the learned counsel, waives service of notice of rule for the respondent. By consent, rule is taken up for final hearing forthwith.

3. The petitioner-company is aggrieved by the orders passed by the Courts below in rejecting the application filed for condonation of delay in filing the written statement and to take the written statement on record.

4. T.E.& R. Suit No. 27/30/2002 came to be filed by the landlord for eviction of the tenant the petitioner-company, sometimes in January, 2002 and though summons were served and the defendant caused its appearance on 20.3.2002, the written statement was not filed. An application under order XIV Rule 2 of C.P.C. was filed by the company without filing written statement and the same was rejected. The trial Court was not convinced of the reasons in allowing the written statement to be taken on record and therefore, by its order dated 7.3.2003 it dismissed the application. The petitioner-company therefore, approached in revision application no.13 of 2003 and the same came to be dismissed by the Division Bench of the Small Causes Court on 13.1.2005.

5. The summons to the petitioner-company were served on 6.3.2002, it filed its appearance on 23.3.2002 and Interim Notice no.3 of 2003 was filed on 9.10.2002. The Courts below have noted that the petitioner-company was granted time to file written statement on 3.4.2002, 16.4.2002, 3.6.2002, 17.5.2002, 28.6.2002, 9.7.2002, 20.7.2002, 31.7.2002 and 5.8.2002. The trial Court therefore, noted that inspite of so many opportunities having been granted to the petitioner-company, it failed to file its written statement within the stipulated period of 90

days and its conduct was indicative of its determination to prolong the trial of the suit. The revision Court agreed with the reasoning given by the trial Court.

6. The trial Court also recorded its opinion that as per order VIII Rule 1 and proviso to the same, the written statement cannot be allowed to be filed later than 90 days from the date of service of the summons. This view in the instant case, is not supported by the law laid down by this Court in the case of *Jerry Alex Braganza alias Jeronimo Oriculo Alex Braganza and another Vs. Rajeshree alias Rayeshri Ramdas Borkar alias Shobhavati Ramdas Borkar and others reported in 2003(4) Mh.L.J. 1034* more so because, the suit was filed in January, 2002 and respondents were served on 6.3.2002. The respondents had caused their appearance on 23.3.2002. Even otherwise, the Division Bench of this Court has subsequently held that the period of 90 days can be varied at the discretion of the Court depending upon the circumstances of each case. In the instant case, the action of the petitioner in moving an application under order XIV Rule 2 of CPC before filing its written statement by itself, cannot be held against it and infact by allowing the company to file its written statement the trial of the suit would be conducted more efficaciously and thus, serve the

interest of the plaintiff as well. However, exemplary costs will have to be imposed against the petitioner in view of its conduct as recorded by the trial Court.

7. In addition, the learned counsel for the plaintiff also submitted that the contractual rental amount has also not been paid right from 1.9.1999. It would be imperative that the arrears of contractual rent are deposited in the Court below within a fixed time and that also would be a condition precedent for allowing the written statement to be taken on record.

8. In the result, this petition succeeds. The orders passed by the Courts below and impugned in this petition are hereby quashed and set aside and Interim Notice no.3 of 2003 stands allowed. The written statement filed by the petitioner shall be taken on record provided the petitioner pays costs of Rs.3000/- and deposits the contractual arrears of rent within two weeks from today in the trial Court, of course, without prejudice to the rights and contentions of the respective parties. The application for withdrawal of the said amount if made by the plaintiff, will be considered by the trial Court on its own merits.

9. Rule made absolute accordingly with no order as to costs.

. Writ to go to the trial Court forthwith.

[B.H.MARLAPALLE,J.]